

In denying the request to terminate the medical benefits, Judge Morrissey stated:

The evidence of claimant having injected himself with some substance appears to be based on speculation. There is no direct proof that any injection actually took place or that a material that could have been injected had aggravated or extended the need for medical care or the extent of needed medical care.

At this juncture of the proceeding, the Appeals Board agrees with Judge Morrissey's Order. Although the Appeals Board would not necessarily view Dr. Heligman's report and opinions as based on sheer speculation, that report considered in light of the other evidence introduced to date does not persuade the Appeals Board at this time that claimant caused the chronic infection in his leg.

The medical records indicate that claimant has battled infection in his injured leg since shortly after the accident. That evidence, coupled with claimant's denials of wrongdoing that the Judge found credible, persuades the Appeals Board at this time to affirm the preliminary hearing Order.

As provided by K.S.A. 1997 Supp. 44-534a, the above findings are not binding but subject to modification upon a full hearing on the claim.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated June 24, 1998, entered by Special Administrative Law Judge William F. Morrissey should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1998.

BOARD MEMBER

c: Gerard C. Scott, Wichita, KS
James M. McVay, Great Bend, KS
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director